

In the Matter of:)
)
Application for Certification for)
the East Altamont Energy Center)
_____)

COMMENTS OF COMMISSION STAFF ON THE PRESIDING MEMBER'S PROPOSED DECISION FOR THE EAST ALTAMONT ENERGY CENTER

On January 29, 2003, the Committee presiding over the East Altamont Energy Center (EAEC) Application for Certification released the Presiding Member's Proposed Decision (PMPD) for review and comment. Energy Commission staff respectfully submits the following comments.

A. The Energy Commission has the responsibility and jurisdiction to ensure all potential significant adverse project impacts are mitigated.

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the AQMA are adequate to mitigate EAEC's potential significant impacts to the state and federal ozone, PM10 and PM2.5 AAQS in the Northern San Joaquin Air Basin").) Staff believes that it is important that the Committee clarify which of these positions accurately reflects the Committee's determination. To assist the Committee, staff respectfully offers the following comments.

As lead agency, the Energy Commission must review the environmental impacts of the project and, before granting approval, must find that all identified significant adverse impacts are either mitigated or that mitigation measures identified in the proceeding are infeasible and there are overriding considerations that warrant approval of the project despite the identified impacts. (Pub. Resources Code §21081; Cal. Code Regs., tit. 20, §1755(c).) These findings must be supported by substantial evidence in the record. (Cal. Code Regs., tit.14, § 15091(b).) Substantial evidence is defined as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached" and consists of facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. (Pub. Resources Code §21080(e)(1); Cal. Code Regs., tit. 14, §15384.)

1. There is insubstantial evidence in the record to support a finding that the BAAQMD ERCs alone are sufficient to mitigate the project's impacts.

Staff respectfully requests the Committee to reconsider its statement that the identified impacts to air quality in the San Joaquin Valley are adequately mitigated by the applicant's provision of BAAQMD ERCs. (See PMPD p. 145.) Unlike past projects before the Commission, this project is located within the jurisdiction of one air district (BAAQMD) while its emissions will predominantly affect another air district (SJVUAPCD); thus impacting a different air basin from which the regulatory offsets will be obtained. (Exh. 1, p. 5.1-34.) Indeed, the PMPD makes a finding indicating that adequate mitigation for impacts to air

quality in the San Joaquin Valley includes both BAAQMD ERCs and a supplemental plan. (PMPD p. 149.)

- a) There is substantial evidence in the record that the BAAQMD ERCs do not fully mitigate the project's impacts to the San Joaquin Valley.

Both the SJVUAPCD and staff testified that the BAAQMD ERCs do not fully mitigate the project's impacts to the San Joaquin Valley. (RT 10/21/02 p. 250; Exh. 1, p. 5.1-26; RT 10/21/02 p. 386; Exh. 5D.) Based in part on a California Air Resources Board (CARB) study, staff and the SJVUAPCD concluded that only 27% of the emission reduction credits purchased in BAAQMD, on the Bay Area side of the Altamont Pass, are effective in reducing or offsetting pollution in the northern region of the SJVUAPCD. (RT 10/21/02 p. 250; Exh. 1, p. 5.1-26; RT 10/21/02 p. 386; Exh. 5D.) Upon further analysis, staff determined that 70% of the emission reduction credits purchased from the Pittsburg/Livermore areas would mitigate project impacts in the San Joaquin Valley. (Exh. 1, p. 5.1-27.)

In addition, BAAQMD testified that not all of the air pollutants originating in the BAAQMD will travel into San Joaquin Valley. (RT 10/21/02 p. 243.) The BAAQMD's testimony is consistent with the conclusions based on the California Air Resources Board study that not all of the reductions in air pollutants obtained by purchasing emission reduction credits in the BAAQMD will offset emissions in the San Joaquin Valley.

The evidence provided to support this determination is based on facts, reasonable assumptions predicated upon facts and expert opinion supported by facts. Therefore, there is substantial evidence in the record that the BAAQMD ERCs alone are insufficient to mitigate the project's impacts identified by the Committee.

- b) Neither the applicant, nor any other party, offered any evidence to support a finding that the BAAQMD ERCs sufficiently mitigate the project's impacts to the San Joaquin Valley.

The applicant did not offer any evidence into the record to rebut staff's and SJVUAPCD's testimony that there is a transport factor that limits the efficacy of the BAAQMD ERCs to mitigate impacts in the San Joaquin Valley.

The applicant's position throughout these proceedings has been that the project will not result in any significant local or regional impacts. The Committee, however, found to the contrary and rejected that argument, so we need not revisit that issue. (PMPD p. 138.) Instead, staff respectfully points the Committee to evidence in the record that reflects a concern regarding the ERCs as inadequate mitigation based on the CARB study, the existence of intervening topography affecting transport, and the fact that the emissions will occur in a different air basin, with worse air quality and stricter offset requirements, than where the ERCs originate. (Exh. 1, pp. 5.1-8 to 11, 5.1-26 to 28, 5.1-34; RT 10/21/02 pp. 250, 384-386.) On these points, the applicant offered no evidence to the contrary. Therefore, the Committee should revise its statement on page 145 of the PMPD to state that the BAAQMD ERCs, by themselves, are not sufficient to mitigate the identified impacts.

- 2. Nor is there substantial evidence in the record to support a finding that the AQMA, in addition to the BAAQMD ERCs, is sufficient to mitigate the project's significant adverse impacts.

The Committee found that the project's impacts are mitigated based on the AQMA in conjunction with the BAAQMD ERCs. (PMPD p. 149.) At a minimum, staff respectfully recommends that the Committee explain how it arrived at this conclusion and impose a condition at least requiring that the offsets identified in the AQMA be achieved or set forth a timeline for such achievement. Merely referencing the AQMA, or encouraging staff to participate in public workshops on the AQMA, without requiring specific provisions within the PMPD, is

insufficient to ensure that additional offsets to supplement the ERCs from the Bay Area will occur to mitigate the project's significant adverse impacts to air quality in the San Joaquin Valley. At the same time, however, staff respectfully submits that there is insubstantial evidence in the record to find that the AQMA and the number of offsets identified by the SJVUAPCD adequately mitigate the project's impacts, and, therefore, prefers that the Committee augment the mitigation plan, as discussed below, based on substantial evidence in the record.

As noted in the PMPD, staff has identified several problems with the AQMA. (PMPD p. 130.) There is no provision requiring emission reductions to occur during project implementation, there is no guarantee that the identified emission reductions will be achieved, there is no provision to monitor the efficacy of the program, and there is no guarantee that emission reductions will occur in the northern San Joaquin Valley. (PMPD p. 130.)

In addition, it is not sufficient to rely on the SJVUAPCD to ensure that mitigation is adequately implemented. The Energy Commission "may delegate reporting or monitoring responsibilities to another public agency ...; *however, until mitigation measures have been completed the lead agency remains responsible for ensuring that implementation of the mitigation measures occurs in accordance with the program.*" (Cal. Code Regs., tit. 14, §15097(a) (emphasis added).) Thus, the Commission may rely on the SJVUAPCD to report on how much mitigation has been attained, but it is the Commission's ultimate responsibility to ensure that all the required mitigation is provided, and these provisions must be set forth in the written decision.

In addition to problems with the AQMA, there are other problems with relying solely on the SJVUAPCD's testimony for a determination of what additional offsets are needed to mitigate the project's impacts.

First, it is unclear what SJVUAPCD testimony the Committee could rely on. SJVUAPCD's oral testimony, and subsequent submittal, significantly differ from the testimony contained in the AQMA. (Exh. 5D.) The AQMA states that the project requires an additional 66.6 tons of NO_x offsets and that additional offsets of VOC, PM₁₀ or SO_x are unnecessary. SJVUAPCD's oral testimony, and subsequent submittal, however, concluded that in addition to 52.6 tons of NO_x, the project would also have to mitigate for 6.6 tons of VOC, and 5.5 tons of PM₁₀. Staff understands that the different results are due to the different methodologies used, but the SJVUAPCD did not sufficiently explain the basis for either methodology or substantiate which methodology it believes best applies in this case.

The Committee should not rely on the numbers contained in the AQMA because those numbers are derived from the use of a distance offset-ratio. The SJVUAPCD offered no facts or expert opinion supported by facts to support the use of a distance-offset ratio in this instance. Substantial evidence in the record clearly establishes that a transport factor, and not a distance ratio, is appropriate. (Exh. 1, pp. 5.1-8 to 11, 5.1-26 to 28, 5.1-34; RT 10/21/02 pp. 250, 384-386.)

The Committee also should not rely on SJVUAPCD's second attempt to calculate the offsets needed. In its second calculation, the SJVUAPCD appropriately uses the 27% transport factor identified by CARB, but then inexplicably reduces its calculation of emissions by the percentage of time the wind blows into the valley during peak season and by the percentage of emissions during peak season. (Exh. 5D.) The SJVUAPCD defines peak season as April through November for VOC and NO_x and October through March for PM₁₀ but offers no justification for these reductions. (Exh. 5D.) It has already been established that the project will be located in the Valley, and the emissions will occur in the Valley with or without winds. (PMPD p. 148.) No party has offered any evidence to support a claim that the project emissions only cause an impact when the wind blows into the Valley. Consequently, these second calculations are not supported by facts,

reasonable assumptions predicated upon facts, or expert opinion supported by facts and, thus, should not be relied upon as substantial evidence.

3. There is substantial evidence to support a finding and a condition requiring emission reductions equivalent to 175 tons per year of NO_x and/or VOCs and 50 tons per year of PM₁₀ in addition to the BAAQMD ERCs.

In the Final Staff Assessment, staff set forth the facts and reasonable assumptions predicated upon facts to support staff's identification of the number of offsets necessary to mitigate the project's impacts. Staff found that by crediting the BAAQMD ERCs with the appropriate transport factor the applicant would need to provide an additional 175 tons per year of NO_x and/or VOC offsets and 50 tons per year of PM₁₀ offsets to mitigate the project's impact in the San Joaquin Valley. (Exh. 1, p. 5.1-27.) The Committee should rely on this substantial evidence to find that such emission reductions, together with the BAAQMD ERCs, are required to mitigate the project's significant air quality impacts in the San Joaquin Valley.

Staff believes that the finding, in turn requires a condition of certification to ensure that the project will not result in significant adverse air quality impacts. Based on substantial evidence in the record, the condition of certification should require the levels of emission reductions identified in the final staff assessment and the preceding paragraph. (Exh. 1, pp. 5.1-8 to 11, 5.1-26 to 28, 5.1-34; RT 10/21/02 pp. 250, 384-386.) Regardless of whether the Committee accepts staff's mitigation proposal, if the Committee finds that the agreement between Calpine and the SJVUAPCD is necessary to mitigate the project's impacts, the PMPD must contain a condition of certification that enables the Commission to retain the authority to ensure that emission reductions identified as necessary in the AQMA in fact occur. (Pub. Resources Code §21081.6 (requiring reporting and monitoring program for mitigation); Cal. Code Regs., tit.14, §15126.4)

The applicant has suggested a condition requiring the payment of the sum identified in the AQMA. However, as acknowledged in the PMPD, the courts have held that mere payment of a sum of money, without a determination that mitigation will be achieved, does not constitute adequate mitigation under CEQA. (*Kings County Farm Bureau v. City of Hanford*, 221 Cal. App. 3d 692 (mitigation measure that allowed solely for the payment of a sum of money violated CEQA where there was no determination that the mitigation agreement was feasible or would obtain the offsets identified).) The PMPD does not make a determination that the identified mitigation will be achieved or identify evidence on which such a determination could be based. Therefore, reliance on the mere payment of money in this instance would be inappropriate. Notably, the Committee appropriately addresses a situation similar to the one discussed here in the Land Use section of the PMPD in Land-7. (PMPD p. 379.)

Therefore, staff recommends that the following condition of certification be added to the decision:

AQ-SC6 The project owner shall provide emissions reductions in the San Joaquin Valley equivalent to 175 tons per year of NO_x and/or VOC, as ozone precursors and 50 tons per year of PM₁₀, with best efforts made to achieve these reductions in the northern San Joaquin Valley. If it proves to be infeasible to obtain the reductions in the northern San Joaquin Valley, the reductions shall be obtained in other parts of the San Joaquin Valley Unified Air Pollution Control District. Full mitigation shall be completed by the start of commercial operation. The project owner may use the AQMA as a means to achieve some or all of the emission reductions required in this condition. If the reductions obtained by the SJVUAPCD with the funds provided are less than the amounts required in this condition, the project owner shall make up the shortfall with offsets and mitigation obtained preferentially from the northern San Joaquin Valley.

Verification: Sixty (60) days after the delivery of the first Combustion Turbine Generator (CTG) to the project site, the project owner shall provide evidence of having provided the funds identified in the AQMA to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) or explain how it otherwise plans to obtain the emission reductions required by this condition. The project owner shall provide a quarterly report discussing any emissions reductions purchased/achieved in the SJVUAPCD in the preceding months pursuant to this condition. The project owner shall provide an annual report to the CPM detailing the tons of emission reductions of NO_x VOC and PM10 secured in that year to meet the requirements of this condition, the method used to secure these reductions, the running total emission reduction credits secured and surrendered, the location of emission reductions, and the status of emission reduction programs. If the reductions obtained by the SJVUAPCD with funds provided from the AQMA are less than the reductions required by this condition, the project owner shall report what additional offsets and mitigation will be to make up the shortfall with preference given to obtaining them from the northern San Joaquin Valley.

4. The Committee should make a finding as to whether the 5-ppm Ammonia Slip limit is necessary to ensure that project impacts are mitigated.

In the PMPD, the Committee states that it does not wish to second-guess the findings of the BAAQMD and the SJVUAPCD with regard to the 10 ppm ammonia slip limit. Staff, however, has testified that a 5 ppm ammonia slip limit is necessary to mitigate for the project's significant adverse impacts. Reliance on the BAAQMD 10 ppm limit is misplaced because that limit was based on the BAAQMD's regulations, not on a CEQA determination, and the BAAQMD admits that it could not have required a more stringent limit due to these regulations. (RT 10/21/02 p. 364.) Because of its CEQA obligation, the Committee should make a determination as to whether or not this mitigation is

necessary, and should explain the bases for such a determination. Staff believes that substantial evidence supports the lower limit. Therefore, staff respectfully requests that AQ-25(e) be changed to reflect the 5 ppm ammonia slip limit with one modification to provide flexibility for the applicant and to help ensure that the project does not cause any violation of district rules and regulations. Staff offers the following condition of certification to be added to the decision.

AQ-SC7 The emissions of ammonia (ammonia slip) from each gas turbine exhaust stack following the SCR controls shall not exceed 5.0 parts per million by volume on a dry basis (ppmvd) corrected to 15 percent oxygen. This emission limitation shall apply during “on-going” operations, except during transient hours. During transient hours, a limitation of 10.0 ppmvd corrected to 15 percent oxygen shall apply on a three-hour average calculated as the average of the transient hour, the clock hour immediately prior to and the clock hour immediately following the transient hour. Compliance with this limit shall be verified through an initial source test and annual source testing thereafter.

Verification: The project owner shall submit to the District and the CPM turbine initial source test data and annual source test data demonstrating compliance with this condition as part of the Quarterly Operational Report.

B. Conclusion

Staff understands the inclination of the Committee to defer to the impacted air district. Such deference, however, is not warranted in this instance. The project’s impacts will contribute to air quality violations in the San Joaquin Valley and must therefore be mitigated. The agreement between the applicant and the SJVUAPCD will not fully mitigate those impacts. Consequently, the significant air quality problems that currently exist in the San Joaquin Valley will be further exacerbated by this project if not properly mitigated.

Staff believes that there is insubstantial evidence in the record to support either a finding that the BAAQMD ERCs alone are sufficient to mitigate the project's air quality impacts or that the AQMA sufficiently remedies the shortfall. Staff further believes that there is substantial evidence in the record to support a determination that a condition of certification is required, using the offset numbers identified by staff, to ensure that the project will not result in significant adverse air quality impacts.

III. ADDITIONAL COMMENTS ON THE PMPD

GENERAL CONDITIONS

- **Page 44, top of page:** Staff recommends that the standard definitions from the FSA be inserted into the PMPD before the discussion of CPM responsibilities, as follows:

DEFINITIONS

To ensure consistency, continuity and efficiency, the following terms, as defined, apply to all technical areas, including Conditions of Certification:

SITE MOBILIZATION

Moving trailers and related equipment onto the site, usually accompanied by minor ground disturbance, grading for the trailers and limited vehicle parking, trenching for construction utilities, installing utilities, grading for an access corridor, and other related activities. Ground disturbance, grading, etc. for site mobilization are limited to the portion of the site necessary for placing the trailers and providing access and parking for the occupants. Site mobilization is for temporary facilities and is, therefore, not considered construction.

GROUND DISTURBANCE

Onsite activity that results in the removal of soil or vegetation, boring, trenching or alteration of the site surface. This does not include driving or parking a passenger vehicle, pickup truck, or other light vehicle, or walking on the site.

GRADING

Onsite activity conducted with earth-moving equipment that results in alteration of the topographical features of the site such as leveling, removal of hills or high spots, or moving of soil from one area to another.

CONSTRUCTION

[From section 25105 of the Warren-Alquist Act.] Onsite work to install permanent equipment or structures for any facility. Construction does **not** include the following:

- the installation of environmental monitoring equipment;
- a soil or geological investigation;
- a topographical survey;
- any other study or investigation to determine the environmental acceptability or feasibility of the use of the site for any particular facility; or
- any work to provide access to the site for any of the purposes specified in a., b., c., or d.

START OF COMMERCIAL OPERATION

For compliance monitoring purposes, "commercial operation" is that phase of project development which begins after the completion of start-up and commissioning, where the power plant has reached steady-state production of electricity with reliability at the rated capacity. For example, at the start of commercial operation, plant control is usually transferred from the construction manager to the plant operations manager.

POWER PLANT EFFICIENCY

- **Page 85, third paragraph, line 2:** The Power Plant Efficiency section of the Final Staff Assessment (page 6.3-3, first paragraph) explains that the project's baseload efficiency will be approximately 56 percent, and the full load efficiency will be approximately 52 percent. Make the following change to the PMPD: Change "full load efficiency" to "baseload efficiency."

TRANSMISSION SYSTEM ENGINEERING

- **Page 89, Summary of Evidence, line 5:** Staff recommends the following change:

"The EAEC switchyard would be interconnected to the existing Western grid by looping the existing Tracy-Westley 230 kV double circuit lines."

- **Page 90, Summary of Evidence, second to last line:** In summarizing the Applicant's testimony, the Committee states that "potential impacts, if any, are mitigated." Staff recommends that the Committee delete the words "if any," as many line overloads (impacts) were in fact identified for this project (FSA, Pages 6.5-6 to 6.5-11).

- **Page 90, footnote 27:** Staff suggests the following changes to the text:

"MID and Applicant have discussed the issue and, based on the evidence in the record, our expectation is that it will be resolved in a satisfactory manner without any need for us to ~~consider imposing~~ appropriate additional mitigation measures."

Staff believes this change is necessary to make clear that the Committee's expectation is firmly supported by the record. Staff notes that it is common in the industry for two or more parties to resolve reliability issues, and staff is confident that this will occur in this case. Additionally, Condition of Certification TSE-1(h)(iv) requires that the project owner provide verification that the issues have been resolved.

- **Page 91, Findings and Conclusions, item 4:** For accuracy, staff recommends the following change:

"The analysis contained in the Staff testimony of record establishes that the proposed EAEC switchyard and interconnection facilities to the Western Area Power Administration's transmission grid will be adequate and reliable."

- **Page 91, Findings and Conclusions, last paragraph:** Because the project will be interconnected to the existing Tracy- Westley 230 kV lines, which are part of the Western grid, staff recommends the reference be changed from "Western's Tracy Substation" to "Western's transmission grid."
- **Page 92, TSE-1:** The requirements listed as items #1-8 need to be identified with letters ("a" through "h") instead of numbers. The conditions internally refer back to letters { a), b),...h)} which are sub items to condition.

AIR QUALITY

- **Page 104, Line 4:** Please delete the word “ever” from the discussion about non-attainment. Attainment determinations by the U.S.EPA make allowances for some violations
- **Pages 128-129:** The PMPD summarizes staff's testimony as saying that the Bay Area ERCs do not satisfy either of the conditions (requirements of Health and Safety Code section 40709.6) listed at the bottom of page 128 and the top of page 129. Staff would like to clarify its position.

Inter-district ERC transfers must satisfy both requirements of Health and Safety Code section 40709.6. Staff asserts that the Bay Area ERCs would not meet the first requirement that:

- (1) the stationary source to which the emission reductions are credited is located in a upwind district that is classified as being in a worse non-attainment status than the downwind district.

The Bay Area and San Joaquin are both non-attainment, but their relative classifications differ. For the state ozone standard, the Bay Area is classified as “serious” non-attainment while SJVAPCD is classified as “severe” non-attainment. For the federal ozone standard, the Bay Area is classified as “marginal” non-attainment while SJVAPCD is classified as “severe” non-attainment. For the federal PM10 standard, the Bay Area is unclassified while SJVAPCD is non-attainment. The Bay Area is cleaner than SJVUAPCD and therefore the ERC transfers would fail to satisfy the first requirement.

However, staff believes that the Bay Area ERCs would satisfy the second H&SC requirement that:

- (2) the stationary source at which there are emissions increases to be offset are located in a downwind district that is overwhelming impacted by emissions transport from the upwind district.

CARB has published the transport links for the state. It demonstrated that some of the violations in SJVUAPCD are overwhelming linked to Bay Area emissions. Staff recommends that the PMPD, on page 128, reflect the following change:

“(T)he Bay Area ERCs do not satisfy ~~either of these requirements~~ the first requirement, and therefore, they could not be used were the project located one-mile to the east in the SJVUAPCD.”

- **Page 148, Findings 24, 25 and 32:** These findings appear to be contradictory. EPA issued revised standards for ozone and particulate matter (smog and soot) in July 1997. On Feb. 27, 2001, the U.S. Supreme Court unanimously upheld the constitutionality of the Clean Air Act as EPA had interpreted it in setting those health-protective air quality standards. The Supreme Court also reaffirmed EPA's long-standing interpretation that it must set these standards based solely on public health considerations without consideration of costs. Therefore, EPA has implemented the new 8-hour ozone standard, but attainment statuses of districts have not yet been defined. Until formal determination of a district's attainment status, specific attainment control measures, classifications, and deadlines have not been adopted. Staff recommends that Finding 25 be deleted.
- **Page 149:** Staff recommends that the following changes to Finding 27 so as to not conflict with Finding 33: The Northern San Joaquin Air Basin, which the EAEC will adversely affect, is non-attainment area for the state 24-hour PM₁₀ AAQS, and will probably be non-attainment of the new federal 24-hour PM_{2.5} AAQS, though. A final attainment designation and schedule for implementation of the new federal PM_{2.5} AAQS has not been completed begun.
- **Page 149:** Staff recommends that the following changes to Finding 29: The SJVUAPCD is classified as ~~serious~~ "non-attainment" for state and federal PM₁₀, "severe-15 year nonattainment" for federal ozone, and "severe nonattainment for state ozone.

WORKER SAFETY/FIRE PROTECTION

- **Page 189, Fire Protection and Emergency Services, first paragraph:** The first sentence implies that TFD is under the jurisdiction of San Joaquin County, and should be revised to read:
 "Because the EAEC facility's proposed location is in Alameda County, initial fire support and emergency services to the site will be under the jurisdiction of the AFCD, with mutual aid provided by ~~San Joaquin County's~~ Tracy Fire Department (TFD) located in San Joaquin County."
- **Page 195, item 7** states that "Alameda County and San Joaquin County have executed automatic and mutual agreements for the San Joaquin County's Tracy Fire Department (TFD) to provide emergency services into the area of Alameda County closest to the City of Tracy." Once again Staff wishes to clarify that San Joaquin County is not involved as a jurisdiction in this project, and should be deleted from this item. It should read:

“Alameda County and Tracy Fire Department (TFD) located in San Joaquin County have executed automatic and mutual aid agreements for the ~~San Joaquin County’s Tracy Fire Department (TFD)~~ to provide emergency services...”

HAZARDOUS MATERIALS MANAGEMENT

- **Page 199-200, last paragraph:** The statement beginning with “Applicant has proposed to store four hazardous materials at the EAEC in quantities exceeding the reportable quantity (RQ)...” is in error. This error was carried over from the FSA (Exh. 1, p. 5.4-1), which inadvertently included hydrogen as present in excess of Reportable Quantities. There is no reportable quantity for hydrogen gas. (Exh. 2, p. 8.12-7.) Therefore, the following changes should be made:
- **Page 199, first paragraph, first sentence:** delete “four” and insert “three.”
- **Page 200, second bullet:** delete this bullet.
- **Page 204, third paragraph:** The citation of “Lees 1996” is an error carried over from the FSA. The following reference is the correct one:
Davies, P.A. and Lees, F.P. 1992. “The Assessment of Major Hazards: The Road Transport Environment for Conveyance of Hazardous Materials in Great Britain.” Journal of Hazardous Materials, 32: 41-79. Therefore, the following changes should be made:
 - line 2: delete “(Lees 1996)” and insert “(Davies and Lees 1992).”
 - line 5: delete “(Lees 1996)” and insert “(Davies and Lees 1992).”
 - line 6: delete “(Lees 1996)” and insert “(Davies and Lees 1992).”
- **Page 210, item 5:** Staff’s analysis pointed out that natural gas will be used in large quantities but not stored on site. Therefore, “natural gas” should be deleted from this list.

BIOLOGICAL RESOURCES

- **Page 247, BIO-9:** The heading for this condition – “Federal Biological Opinion” – was mistakenly inserted above as part of BIO-8.

SOIL AND WATER RESOURCES

On February 19, 2003, staff received a signed resolution from the Board of Directors of the Mountain House Community Services District expressing the Board’s support for the provision of all of the District’s recycled water to EAEC. Staff has attached this resolution to the back of these comments.

CULTURAL RESOURCES

- **Page 338, first paragraph, last sentence:** As required by law, staff's analysis of cultural resources must consider buildings, sites, structures, objects, historic districts, and Native American cultural concerns. Staff, therefore, recommends the following changes to the text:

~~"Three~~ The aspects of cultural resources were addressed in Applicant's and in Staff's analysis are: prehistoric archaeological resources, historic period resources, and ethnographic resources buildings, sites, structures, objects, historic districts, and Native American cultural concerns."

- **Page 338, Summary of the Evidence, first paragraph, last sentence:** Western concurs with the recommendation that the Delta Mendota Canal Intake Structure and the Westside Irrigation District Complex are eligible to the NRHP. Staff agrees with the recommendation that the Delta Mendota Canal Intake Structure, Westside Irrigation District Complex and the Tracy Pumping Station are eligible to the CRHR. Staff, therefore, suggests the following changes:

"The results of these surveys indicated that several infrastructure features appear eligible for listing with the National Register of Historic Places and the California Register of Historical Resources (Delta Mendota Canal Intake Structure, and the Westside Irrigation District Complex, and the Tracy Pumping Station). (Ex. 2, P. 2.3-3)"

- **Page 338, Summary of the Evidence, second paragraph, first sentence:** To reflect the fact that the applicant has already completed preconstruction surveys and test excavations, and to ensure that the ethnographic survey is not left out, staff recommends the following changes:

"The EAEC has already complied with some laws, ordinances, regulations, and standards by completing the necessary preconstruction surveys for cultural resources and conducting test excavations for cultural resources not visible on the surface. The applicant will satisfy remaining LORS by EAEC will comply with laws, ordinances, regulations and standards by completing preconstruction surveys for cultural resources, completing test excavations for cultural resources that are not visible on the surface, and monitoring during earth disturbing activities and conducting an ethnographic survey."

- **Page 339, Findings and Conclusions, finding 1:** The PMPD incorrectly states that there are no known cultural resources in the area. Cultural Resources in the form of Historical Resources do exist in the general project area (i.e. the Delta Mendota Canal Intake Structure, the Westside Irrigation District, and the Tracy Pumping Station) and there are also Native American cultural concerns. Therefore, staff suggests the following changes:

"1. ~~No known~~ Cultural resources exist in the general project area (the Delta Mendota Canal, the Westside Irrigation District, and the Tracy Pumping Station) and there are Native American cultural concerns."

- **Page 343, Condition of Certification CUL-3, item f, fourth sentence:** The word "Henderson" should be changed to "Wicklund."

GEOLOGY AND PALEONTOLOGY

- **Page 351, second paragraph, fourth sentence:** Staff recommends the following correction:

"However, based upon the site geotechnical investigation liquefaction ~~liquefaction~~ is not considered a significant concern for the EAEC site."

- **Page 352, second paragraph:** Since the CBC does not address geological resources the following alternate wording is suggested:

"There are no known geological resources at or around the site. Staff's witness provided testimony that design and construction of the project to conform to the CBC (1998) requirements will ensure that the project has no adverse impacts on geological resources with respect to geologic hazards."

- **Page 353, last paragraph under heading of Paleontological Resources:** Staff suggests the following changes:

"Staff has proposed Conditions of Certification, below, that will ensure that any potential impacts upon paleontological resources will be reduced to a less than significant level should ~~they~~ such resources be encountered during construction, operation, or closure of the project. Applicant concurs with these Conditions. (Ex. 1, p. 6.2-5.)"

LAND USE

- **Page 372, top of page, first bullet:** Staff found that the proposed FMA as a condition of certification reduces the significant impact to less than significant, and not to a level of “insignificance” as the PMPD states. Therefore, the wording on page 372 should be changed to read as follows:

“Staff has reviewed the FMA and found that it reduces the conversion’s impact to a ~~level of insignificance~~ less than significant level under CEQA with implementation of Staff’s recommended condition of certification **Land-7**.”

- **Page 377, item 9:** Again, the term “insignificance” is used to indicate the level of the loss of open space and agricultural resources impact. For the same reason as above, the wording of this item should be changed to read as follows:

“9. The EAEC project’s construction would create a significant cumulative impact on agricultural resources and open space that would be reduced to a ~~level of insignificance~~ less than significant level with the application of appropriate mitigation.”

NOISE

- **Page 395, NOISE-10:** Insert the “Verification” heading before the second paragraph.

VISUAL RESOURCES

- **Page 404:** The last sentence of the first paragraph states that “Applicant describes the visual quality of the immediate project area as moderately low.” However, this generalized characterization is inconsistent with the Applicant’s detailed analysis of the view for motorists traveling northwest along Byron Bethany Road, represented by KOP 5. The Visual Resources section of the AFC states on page 8.11-11, third full paragraph, lines 6-7, that “the view from this area can be classified as having a moderate to moderately high level of visual quality.” The PMPD should be revised to reflect this.
- **Pages 411-413:** The Summary and Discussion section omits any discussion of the potential for visual impacts to viewers who are travelers on nearby roads, despite the fact that both the Applicant and Staff identified such viewers and evaluated the project’s impacts on them. In fact, Staff’s position that visual impacts would be significant is based on impacts to travelers on nearby roads, and that was the main issue between the Applicant and Staff. Therefore, the Summary and Discussion section of the PMPD should acknowledge that travelers on nearby roads would have views of the project.

- **Page 416, last paragraph:** Staff wants to make sure that it is clear that in direct testimony at the evidentiary hearing, Staff explained that its reference to foreground views only applied to travelers on nearby roads, not to residences. The matter of foreground views from residences is a non-issue that should be deleted from the PMPD.
- **Page 423, Finding 12:** The recent decision in Communities for a Better Environment v. California Resources Agency (2002)103 Cal. App. 4th 98 struck down section 15130(a)(4) of title 14 of the California Code of Regulations which had allowed an agency to find that a project did not have a significant adverse cumulative impact if its incremental contribution to the impact was “de minimis” when compared to the existing cumulative impact. The court held that the proper inquiry is whether the project’s impact, when combined with the existing cumulative impact of other projects, is cumulatively considerable. Therefore, staff recommends that Finding 12 be deleted and replaced with the following language:

“The EAEC’s impact to visual resources, when combined with the existing cumulative impact of other projects, is not cumulatively considerable, and thus does not result in a significant cumulative impact to visual resources.”

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